


TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Financial Assurance Update

AGENDA REQUESTED: August 24, 2022

DATE OF REQUEST: August 5, 2022

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Cecilia Mena, Agenda Coordinator, (512) 239-6098

CAPTION: Docket No. 2022-0520-MIS. In compliance with 30 Texas Administrative Code Sections 336.736(c), 336.737(c), 336.738(b) and 336.1235(c), Waste Control Specialists' financial assurance mechanisms and cost estimates are reviewed annually to assure that sufficient funds are available for institutional control, any corrective action and completion of the closure plan, assuming that the work has to be performed by an independent contractor. (Vaishali Tendolkar, Amie Robinson; Non-Rule Project No. 2022-019-MIS-NR)



Director



Division Deputy Director

Cecilia Mena

Agenda Coordinator


Copy to CCC Secretary? NO YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 5, 2022

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From:  Brent Wade, Director
Office of Waste

Docket No.: 2022-0520-MIS

Subject: Licensee Financial Assurance Mechanisms and Cost Estimates
Non-Rule Project No. 2022-019-MIS-NR

Background and reasons for the non-rule project:

Radioactive Materials License R04100 authorizes: (1) the treatment, storage, and processing of radioactive substances and (2) the disposal of low-level radioactive waste at Waste Control Specialists' (WCS) Compact Waste Disposal Facility and the Federal Facility Waste Disposal Facility. Texas Health and Safety Code (THSC), Texas Commission on Environmental Quality (TCEQ) rules, and conditions of the license require WCS to provide financial assurance in an amount sufficient for a third party to carry out decommissioning activities. Regarding disposal, the amount of financial assurance is determined by cost estimates and supporting analyses for the following cost categories: Closure, Post-Closure, and Corrective Action. The treatment, storage, and processing only requires financial assurance for the Closure cost category.

These cost estimates and analyses are the starting point for determining the amount of financial assurance WCS must provide for the Compact Waste Disposal Facility and the Federal Facility Waste Disposal Facility. The TCEQ reviews those estimates and supporting analyses for accuracy, reasonableness, and completeness when submitted. The cost estimates must be updated annually by the anniversary date of the financial assurance mechanism. At a minimum, the update must provide an annual increase for inflation, even if there are no substantive revisions to the estimates (see 30 Texas Administrative Code (TAC) §37.131 and License R04100 Conditions 184 and 185).

The last substantive revision occurred in August 2014, when WCS applied for and TCEQ issued Amendment 26 to License R04100. At that time, the TCEQ thoroughly reviewed the cost estimates and supporting analyses and found they were adequate. Since Amendment 26, the conditions and status of the site have not changed, and WCS' annual updated cost estimates have only reflected inflation adjustments. The executive director determined that since the conditions and status of the site have not changed, no change to the adequacy determination is warranted at this time.

The last substantive revision for the treatment, storage, and processing of radioactive substances occurred in May 2020, when WCS applied for and TCEQ issued Amendment 34 to License R04100. At that time, the TCEQ thoroughly reviewed the cost estimates and supporting analyses and found they were adequate. Since the conditions and status of the site have not changed, WCS' annual updated cost estimates have only reflected inflation adjustments. The executive director determined that since the conditions and status of the site have not changed, no change to the adequacy determination is warranted at this time.

The regulations in 30 TAC §37.9050 outline the types and specific requirements WCS' financial assurance mechanisms must meet to satisfy its financial assurance obligations. The TCEQ reviews those mechanisms at the time they are initially submitted and in response to any requests for a revision to the type of mechanism or amount. The TCEQ reviewed those mechanisms and determined that the requirements in 30 TAC Chapter 37 continue to be met.

Definitions for cost estimate categories:

Closure - 30 TAC §37.9035(2) defines closure as "Any one or combination of the following: closure, dismantlement, decontamination, decommissioning, reclamation, disposal, aquifer restoration, stabilization, monitoring, or post closure observation and maintenance."

Post-Closure - 30 TAC §37.9035(7) defines post-closure as "The activities that are identified as institutional control as specified in §336.734 of this title (relating to Institutional Requirements)." Per 30 TAC §336.734(b), these activities include, but are not limited to, "carrying out an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and other requirements as determined by the commission or executive director, and administration of funds to cover the costs for these activities. The period of institutional control shall be determined by the commission but may not be relied upon for more than 100 years following transfer of control of the disposal site to the custodial agency."

Corrective Action - 30 TAC §37.9035(3) defines corrective action as "The activities to remediate unplanned events that pose a risk to public health, safety, and the environment and that may occur after the decommissioning and closure of the compact waste disposal facility or a federal facility waste disposal facility."

Scope of the non-rule project:

This non-rule project satisfies the requirements in 30 TAC §336.736(c) and §336.1235(c) that the financial assurance mechanism and cost estimates be reviewed annually by the commission at an open meeting.

A.) Summary of what the non-rule project will do:

Approval of this non-rule project will affirm that the financial assurance mechanisms and costs estimates provided for Radioactive Materials License R04100 are adequate and meet the requirements of state statute and agency rules.

B.) Scope required by federal regulations or state statutes:

THSC, §401.108, requires the commission at regular intervals, not to exceed five years, review the licensee's financial assurance mechanisms and cost estimates.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

- Texas Radiation Control Act, THSC, §401.011, which provides the commission authority to regulate and license the treatment, storage, processing, and disposal of radioactive substances.
- THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation.
- THSC, §401.108, which requires the commission at regular intervals, not to exceed five years, review the licensee's financial assurance mechanism and cost estimates.
- THSC, §401.151, which authorizes the commission to ensure that the management of low-level radioactive waste is compatible with applicable federal commission standards.
- THSC, §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances.
- Title 10 Code of Federal Regulations (CFR) Part 150 which is necessary in order to preserve Texas as an Agreement State pursuant to Title 10 CFR Part 150.
- Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and
- TWC, §5.103, which establishes the commission's general authority to adopt rules.

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Effect on the:

A.) Regulated community:

There would be no significant impact on the regulated community because this action applies to only one licensee. Since the cost estimates have been found adequate, there are no significant impacts on the licensee.

B.) Public:

None.

C.) Agency programs:

None.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this non-rule project.

Potential controversial concerns and legislative interest:

No controversial concerns or legislative interests have been identified.

Will this non-rule project affect any current policies or require development of new policies?

No effect on existing agency policies or need for new policies has been identified.

What are the consequences if this non-rule project does not go forward? Are there alternatives to rulemaking?

No immediate consequences have been identified if this non-rule project is not considered.

Although, if not considered, the commission would not be following the statutory requirements in THSC, §401.108.

Agency contacts:

Vaishali Tendolkar, Project Manager, Radioactive Materials Division, (512) 239-5747

Amie Robinson, Staff Attorney, Environmental Law Division, (512) 239-2999

Cecilia Mena, Agenda Coordinator, (512) 239-6098

Attachment:

WCS Financial Assurance Cost Estimate Summary as of May 6, 2022

cc: Chief Clerk, 7 copies

**Radioactive Materials License R04100
Financial Assurance
As of May 6, 2022**



(Millions)

Low Level Radioactive Waste Disposal Facility

Current Cost Estimates	* 2020 Dollars
Closure	\$48.1
Post Closure Monitoring	\$25.8
Corrective Action	\$22.6
Sub Total	\$96.5

Financial Assurance

Atlantic Specialty Ins. Co. Bond	\$39.5
The Hanover Ins. Co. Bond	\$6.0
Argonaut Ins. Co. Bond	\$51.0
Sub Total	\$96.5

Low Level Radioactive Waste Treatment, Storage & Processing Facility

Current Cost Estimates	* 2020 Dollars
Closure	\$28.5
Sub Total	\$28.5

Financial Assurance

Atlantic Specialty Ins. Co. Bond	\$28.5
Sub Total	\$28.5

Cost Estimates

Financial Assurance

Totals	\$125.0	\$125.0
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* Cost estimates subject to annual inflation adjustments - next adjustment for 2021 dollars not required by rule until November 4, 2022.